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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SHAVONDA HAWKINS, on behalf of
12 herself and all others similarly situated ,
13 Plaintiff,
14 v.
15 THE KROGER COMPANY,
16 Defendant.

Case No.: 15cv2320-JM(BLM)

**SCHEDULING ORDER
REGULATING DISCOVERY
AND OTHER PRE-TRIAL
PROCEEDINGS**

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18 On June 5, 2019, the Court held an Early Neutral Evaluation Conference (“ENE”)
19 in the above-entitled action. ECF No. 57. Settlement of the case could not be reached
20 during the ENE and the Court therefore conducted a Case Management Conference
21 pursuant to Rule 16.1(d) of the Local Rules. After consulting with the attorneys of record
22 for the parties and being advised of the status of the case, and good cause appearing, **IT IS**
23 **HEREBY ORDERED:**

24 1. The parties shall file a joint motion for protective order, which includes the
25 terms of their agreement for handling confidential documents and information on or before
26 **June 26, 2019.**

27 2. Any motion to join other parties, to amend the pleadings, or to file additional
28 pleadings shall be filed by **August 2, 2019.**

1 3. Any motion for class certification must be filed on or before **December 6,**
2 **2019.**

3 4. All fact discovery shall be completed by all parties on or before **February 14,**
4 **2020.** "Completed" means that all discovery under Rules 30-36 of the Federal Rules of
5 Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient
6 period of time in advance of the cut-off date, so that it may be completed by the cut-off
7 date, taking into account the times for service, notice, and response as set forth in the
8 Federal Rules of Civil Procedure.

9 Counsel shall promptly and in good faith meet and confer with regard to all
10 discovery disputes in compliance with Federal Rule of Civil Procedure 37(a)(1) and Civil
11 Local Rule 26.1(a). All discovery motions must be filed within 30 days of the service of
12 an objection, answer or response which becomes the subject of dispute or the passage of a
13 discovery due date without response or production, and only after counsel have met and
14 conferred and have reached impasse with regard to the particular issue. The Court's
15 procedures for resolving discovery disputes are set forth in Magistrate Judge Barbara L.
16 Major's Civil Chambers Rules, which are posted on the Court's website. **A failure to**
17 **comply in this regard will result in a waiver of a party's discovery issue. Absent an**
18 **order of the court, no stipulation continuing or altering this requirement will be**
19 **recognized by the court.**

20 5. The parties shall designate their respective experts in writing by **January 10,**
21 **2020.** The parties must identify any person who may be used at trial to present evidence
22 pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not limited to
23 retained experts. The date for exchange of rebuttal experts shall be by **February 7, 2020.**
24 The written designations shall include the name, address and telephone number of the
25 expert and a reasonable summary of the testimony the expert is expected to provide. The
26 list shall also include the normal rates the expert charges for deposition and trial testimony.

27 6. By **March 13, 2020,** each party shall comply with the disclosure provisions
28 in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure

1 requirement applies to all persons retained or specially employed to provide expert
2 testimony, or whose duties as an employee of the party regularly involve the giving of
3 expert testimony. **Except as provided in the paragraph below, any party that fails to**
4 **make these disclosures shall not, absent substantial justification, be permitted to use**
5 **evidence or testimony not disclosed at any hearing or at the time of trial. In addition,**
6 **the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

7 7. Any party shall supplement its disclosure regarding contradictory or rebuttal
8 evidence under Fed. R. Civ. P. 26(a)(2)(D) by **April 3, 2020**.

9 8. All expert discovery shall be completed by all parties by **May 1, 2020**. The
10 parties shall comply with the same procedures set forth in the paragraph governing fact
11 discovery.

12 9. Failure to comply with this section or any other discovery order of the court
13 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
14 the introduction of experts or other designated matters in evidence.

15 10. All other pretrial motions must be filed by **May 29, 2020**. Counsel for the
16 moving party must obtain a motion hearing date from the law clerk of the judge who will
17 hear the motion. The period of time between the date you request a motion date and the
18 hearing date may vary from one district judge to another. Please plan accordingly. Failure
19 to make a timely request for a motion date may result in the motion not being heard.
20 Motions in limine are to be filed as directed in the Local Rules, or as otherwise set by the
21 district judge.

22 11. A Mandatory Settlement Conference shall be conducted on **February 24,**
23 **2020** at **9:30 a.m.** in the chambers of Magistrate Judge Barbara L. Major located at **333**
24 **West Broadway, Suite 1110, San Diego, CA 92101**. All discussions at the Mandatory
25 Settlement Conference will be informal, off the record, privileged, and confidential.
26 Counsel for any non-English speaking party is responsible for arranging for the appearance
27 of an interpreter at the conference.
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1 a. **Personal Appearance of Parties Required:** All parties, adjusters for
2 insured defendants, and other representatives of a party having full and complete authority
3 to enter into a binding settlement, as well as the principal attorneys responsible for the
4 litigation, must be present **in person** and legally and factually prepared to discuss
5 settlement of the case. Counsel appearing without their clients (whether or not counsel has
6 been given settlement authority) will be cause for immediate imposition of sanctions and
7 may also result in the immediate termination of the conference.

8 Unless there is good cause, persons required to attend the conference pursuant to
9 this Order shall not be excused from personal attendance. Requests for excuse from
10 attendance for good cause shall be made in writing at least three (3) court days prior to the
11 conference. Failure to appear in person at the Mandatory Settlement Conference will be
12 grounds for sanctions.

13 b. **Full Settlement Authority Required:** In addition to counsel who will
14 try the case, a party or party representative with full settlement authority¹ must be present
15 for the conference. In the case of a corporate entity, an authorized representative of the
16 corporation who is not retained outside counsel must be present and must have
17 discretionary authority to commit the company to pay an amount up to the amount of
18 Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement
19 is to have representatives present who can settle the case during the course of the
20 conference without consulting a superior. Counsel for a government entity may be excused
21 from this requirement so long as the government attorney who attends the Mandatory
22 Settlement Conference (1) has primary responsibility for handling the case, and (2) may
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24 ¹ "Full settlement authority" means that the individuals at the settlement conference must be authorized to
25 explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties.
26 Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have
27 "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Int'l,
28 Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement
authority to attend the conference contemplates that the person's view of the case may be altered during
the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick
v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 negotiate settlement offers which the attorney is willing to recommend to the government
2 official having ultimate settlement authority.

3 c. **Confidential Settlement Statements Required:** No later than
4 **February 14, 2020**, the parties shall submit directly to Magistrate Judge Major's chambers
5 (via hand delivery or email address) confidential settlement statements no more than ten
6 (10) pages in length. **These confidential statements shall not be filed or served on**
7 **opposing counsel.** Each party's confidential statement must set forth the party's statement
8 of the case, identify controlling legal issues, concisely set out issues of liability and
9 damages, and shall set forth the party's settlement position, including any previous
10 settlement negotiations, mediation sessions, or mediation efforts, the last offer or demand
11 made by that party, and a separate statement of the offer or demand the party is prepared
12 to make at the settlement conference. If a specific demand or offer for settlement cannot
13 be made at the time the brief is submitted, then the reasons therefore must be stated along
14 with a statement as to when the party will be in a position to state a demand or make an
15 offer.

16 General statements that a party will "negotiate in good faith" is not a specific
17 demand or offer contemplated by this Order. It is assumed that all parties will negotiate in
18 good faith.

19 d. **Requests to Continue a Mandatory Settlement Conference:** Any
20 request to continue the Mandatory Settlement Conference or request for relief from any of
21 the provisions or requirements of this Order must be sought by a **written ex parte**
22 **application.** The application must (1) be supported by a declaration of counsel setting
23 forth the reasons and justifications for the relief requested, (2) confirm compliance with
24 Civil Local Rule 83.3(h), and (3) report the position of opposing counsel or any
25 unrepresented parties subject to the Order. **Absent good cause, requests for continuances**
26 **will not be considered unless submitted in writing no fewer than (7) days prior to the**
27 **scheduled conference.**

1 **If the case is settled in its entirety before the scheduled date of the conference,**
2 **counsel and any unrepresented parties must still appear in person, unless a written**
3 **joint notice confirming the complete settlement of the case is filed no fewer than**
4 **twenty-four (24) hours before the scheduled conference.**

5 12. In jury trial cases before Judge Miller, neither party is required to file
6 Memoranda of Contentions of Fact and Law.

7 13. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
8 Civ. P. 26(a)(3) by **August 28, 2020**. Failure to comply with these disclosure requirements
9 could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

10 14. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
11 **September 4, 2020**. At this meeting, counsel shall discuss and attempt to enter into
12 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
13 exchange copies and/or display all exhibits other than those to be used for impeachment.
14 The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall
15 note any objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ.
16 P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference
17 order.

18 15. Counsel for plaintiff will be responsible for preparing the pretrial order and
19 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **September 11,**
20 **2020**, plaintiff's counsel must provide opposing counsel with the proposed pretrial order
21 for review and approval. Opposing counsel must communicate promptly with plaintiff's
22 attorney concerning any objections to form or content of the pretrial order, and both parties
23 shall attempt promptly to resolve their differences, if any, concerning the order.

24 16. The Proposed Final Pretrial Conference Order, including objections to any
25 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
26 lodged with the assigned district judge by **September 18, 2020**, and shall be in the form
27 prescribed in and comply with Local Rule 16.1(f)(6).

28 17. The final Pretrial Conference is scheduled on the calendar of the **Honorable**

1 **Jeffrey T. Miller** on September 25, 2020 at 8:30 a.m. A trial will be held before the
2 Honorable Jeffrey T. Miller, United States District Court Judge, on October 26, 2020 at
3 10:00 a.m.

4 18. The parties must review the chambers' rules for the assigned district judge
5 and magistrate judge.

6 19. A post trial settlement conference before a magistrate judge may be held
7 within 30 days of verdict in the case.

8 20. The dates and times set forth herein will not be modified except for good cause
9 shown.

10 21. Briefs or memoranda in support of or in opposition to any pending motion
11 shall not exceed twenty-five (25) pages in length without leave of a district court judge.
12 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.
13 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents
14 and a table of authorities cited.

15 22. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
16 case hereafter.

17 **IT IS SO ORDERED.**

18 Dated: 6/6/2019

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20 Hon. Barbara L. Major
21 United States Magistrate Judge
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